

110TH CONGRESS
2D SESSION

H. R. 5228

To protect employees from invasion of privacy by employers by prohibiting video and audio monitoring of employees when in an area where it is reasonable to expect employees to change clothing.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2008

Mr. ANDREWS (for himself and Mr. PETRI) introduced the following bill;
which was referred to the Committee on Education and Labor

A BILL

To protect employees from invasion of privacy by employers by prohibiting video and audio monitoring of employees when in an area where it is reasonable to expect employees to change clothing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employee Changing
5 Room Privacy Act”.

1 **SEC. 2. PROHIBITION AGAINST VIDEO OR AUDIO MONI-**
2 **TORING OF EMPLOYEES IN CERTAIN EM-**
3 **PLOYMENT LOCATIONS.**

4 (a) IN GENERAL.—An employer may not engage in
5 video monitoring or audio monitoring of an employee of
6 the employer when the employee is in a restroom facility,
7 dressing room, or any other area in which it is reasonable
8 to expect employees of the employer to change clothing.

9 (b) USE OF MONITORING RESULTS.—An employer
10 may not use the results of video or audio monitoring con-
11 ducted in violation of this Act for any purpose, including
12 any employee discipline. An employer shall immediately
13 destroy all copies of any recording determined to have
14 been made in violation of this Act.

15 (c) NON-RETALIATION.—An employer may not dis-
16 charge, discipline, or discriminate in any manner against
17 an employee because the employee has—

18 (1) filed any complaint or instituted or caused
19 to be instituted any proceeding under this Act; or

20 (2) testified or is about to testify in any pro-
21 ceeding under this Act.

22 (d) LIMITATION.—Nothing in this Act shall prohibit
23 any video monitoring or audio monitoring conducted by
24 a law enforcement agency as part of a criminal investiga-
25 tion and pursuant to a validly issued warrant.

1 **SEC. 3. ENFORCEMENT ACTION BY SECRETARY OF LABOR.**

2 (a) IN GENERAL.—Any employer who violates section
3 2 shall be liable to the United States for a civil money
4 penalty in an amount not to exceed \$18,000 for each viola-
5 tion.

6 (b) WRITTEN NOTICE AND OPPORTUNITY FOR
7 HEARING.—The Secretary of Labor shall assess a civil
8 money penalty under subsection (a) by an order made on
9 the record after opportunity for a hearing provided in ac-
10 cordance with section 554 of title 5, United States Code.
11 In connection with the hearing, the Secretary may issue
12 subpoenas requiring the attendance and testimony of wit-
13 nesses and the production of evidence that relates to the
14 subject matter of the hearing.

15 (c) DETERMINATION OF AMOUNT OF CIVIL MONEY
16 PENALTY.—In determining the amount of a civil money
17 penalty under subsection (a), the Secretary shall take into
18 account—

19 (1) the nature, circumstances, extent, and grav-
20 ity of the violation or violations; and

21 (2) with respect to the violator, the ability to
22 pay, effect on ability to continue to do business, any
23 history of prior violations, the degree of culpability,
24 and such other matters as justice may require.

25 (d) MODIFICATION OF CIVIL MONEY PENALTY.—The
26 Secretary may compromise, modify, or remit, with or with-

1 out conditions, any civil money penalty assessed under
2 subsection (a). The amount of such penalty, when finally
3 determined, or the amount agreed upon in compromise,
4 may be deducted from any sums owing by the United
5 States to the employer.

6 (e) JUDICIAL REVIEW.—An employer who requested,
7 in accordance with section 554 of title 5, United States
8 Code, a hearing respecting the assessment of a civil money
9 penalty under this subsection, and who is aggrieved by the
10 order assessing the penalty may file a petition for judicial
11 review of the order with the United States Court of Ap-
12 peals for the District of Columbia Circuit or for any other
13 circuit in which the employer resides or transacts business.
14 Such a petition may only be filed within the 120-day pe-
15 riod beginning on the date the order was issued.

16 (f) FAILURE TO PAY.—The Secretary of Labor may
17 recover, in an action brought in any appropriate district
18 court of the United States, the amount of a civil money
19 penalty assessed under this subsection against an em-
20 ployer who fails to pay the penalty—

21 (1) after the order making the assessment be-
22 comes final, and if such employer does not file a pe-
23 tition for judicial review of the order in accordance
24 with subsection (e); or

1 (2) after a court in an action brought under
2 subsection (e) has entered a final judgment in favor
3 of the Secretary.

4 (g) NO REVIEW OF PENALTY.—In an action brought
5 under subsection (f), the validity, amount, and appro-
6 priateness of the civil money penalty shall not be subject
7 to review.

8 (h) INJUNCTIVE RELIEF.—The Secretary may com-
9 mence, in any court of competent jurisdiction, a civil ac-
10 tion for the purpose of obtaining temporary or permanent
11 injunctive relief with respect to preventing a violation of
12 section 2.

13 **SEC. 4. CIVIL CAUSE OF ACTION BY AGGRIEVED EM-**
14 **PLOYEE.**

15 (a) IN GENERAL.—An employee who is aggrieved as
16 a result of a violation of section 2 by the employer of such
17 employee may commence, in any court of competent juris-
18 diction, a civil action against the employer to obtain ap-
19 propriate relief, including—

20 (1) an injunction to enjoin the employer from
21 further engaging in the violation or from committing
22 any further violation, as appropriate;

23 (2) damages not to exceed \$25,000; or

24 (3) both such remedies.

1 In any action or proceeding under this section, the court,
2 in its discretion, may allow the prevailing party a reason-
3 able attorney's fee (including expert fees) as part of the
4 costs.

5 (b) COMMENCEMENT OF PROCEEDINGS.—An em-
6 ployee referred to in subsection (a) may not commence
7 proceedings under such subsection against an employer of
8 the employee after the expiration of the 7-year period be-
9 ginning on the later of the following:

10 (1) The date on which the employer allegedly
11 engaged in a violation of section 2.

12 (2) The date on which the employee should
13 have been aware of an alleged violation of section 2
14 by the employer.

15 **SEC. 5. EFFECT ON STATE LAWS AND COLLECTIVE BAR-**
16 **GAINING AGREEMENTS.**

17 (a) STATE LAWS.—This Act does not annul, alter,
18 or affect in any manner the meaning, scope, or applica-
19 bility of the laws of any State or political subdivision of
20 any State, except to the extent such laws are inconsistent
21 with this Act, and then only to the extent of the inconsis-
22 tency. A law is not inconsistent with this Act if the law
23 affords greater protection to an employee than the protec-
24 tion provided under this Act.

1 (b) COLLECTIVE BARGAINING AGREEMENTS.—This
2 Act does not annul, alter, or affect in any manner the
3 meaning, scope, or applicability of any collective bar-
4 gaining agreements, except to the extent that such agree-
5 ments are inconsistent with this Act, and then only to the
6 extent of the inconsistency. An agreement is not incon-
7 sistent with this Act if the agreement affords greater pro-
8 tection to an employee than the protection provided under
9 this Act.

10 **SEC. 6. DEFINITIONS.**

11 In this Act:

12 (1) AUDIO MONITORING.—The term “audio
13 monitoring” means the listening to, collecting, or re-
14 cording of sounds of an employee by means of audio
15 equipment or other method.

16 (2) EMPLOYEE.—The term “employee” means
17 any person who is employed by an employer or who
18 was employed by an employer at the time of a viola-
19 tion that was allegedly committed by that employer.
20 Such term includes leased or temporary employees
21 and an employee who is under contract to perform
22 work for an employer.

23 (3) EMPLOYER.—The term “employer” means
24 any person or entity engaged in commerce or in an
25 industry or activity affecting interstate commerce.

1 (4) VIDEO MONITORING.—The term “video
2 monitoring” means the videotaping, photographing,
3 filming, or recording by any electronic means of an
4 employee, or installing a device that videotapes, pho-
5 tographs, films, or otherwise records visual images.

6 (5) SECRETARY.—The term “Secretary” means
7 the Secretary of Labor.

8 (6) STATE.—The term “State” means a State
9 of the United States, the District of Columbia, the
10 Commonwealth of Puerto Rico, or a territory or pos-
11 session of the United States.

12 **SEC. 7. EFFECTIVE DATE.**

13 This Act takes effect 60 days after the date of the
14 enactment of this Act.

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